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Home > Businesses > Help & Resources > Legal Library > Directives > Directives - By Decade > (2000-2009) Directives >

Directive 03-11: Sales Tax on Motor Vehicles Purchased for Use in Transporting Persons Qualifying For Exemption under G.L. c. 64H, s. 6(u)

I. INTRODUCTION

The purpose of this Directive is to explain the exemption from Massachusetts sales tax for purchases of motor vehicles for the use in transporting persons described in G.L. c. 64H, § 6(u). Because certain persons described in G.L. c. 64H, § 6(u) may be minors or adults who cannot legally enter into binding contracts, this Directive discusses the availability of the exemption in cases where a person other than the person described in section 6(u) purchases a motor vehicle for the personal, noncommercial transportation of an otherwise eligible person. It also provides the rules for substantiating a claim of exemption by the purchaser of the vehicles.

II. DIRECTIVES

Issue 1: Does the sales tax exemption in G.L. c. 64H, § 6(u) apply to purchases of a motor vehicle for use in transporting a minor child described in G.L. c. 64H, § 6(u)?

Directive 1: Yes. The purchase of a motor vehicle by a parent or legal guardian of a minor child described in G.L. c. 64H, § 6(u) is exempt from sales tax. In order to substantiate a claim for exemption, the following conditions must be met:

1. The name(s) of the parent(s) or legal guardian(s) of the qualifying minor must be on Form RMV-1 as the owner; and
2. Form RMV-1 must be accompanied by a properly completed DOR Form MVU-33^[1] in the name of the qualifying minor child.

Issue 2: Does the sales tax exemption in G.L. c. 64H, § 6(u) apply to purchases of motor vehicles for use in transporting an adult described in G.L. c. 64H, § 6(u)?

Directive 2: Yes. The purchase of a motor vehicle by a legal guardian or legal conservator of an adult who is both 1) unable to enter into a legal contract and 2) who is a person described in G.L. c. 64H, § 6(u) is exempt from sales tax. In order to substantiate a claim of exemption, the following conditions must be met:

1. The name(s) of the legal guardian(s) or conservator(s) of the qualifying adult must appear on the

Form RMV-1 as the owner's; and

2. name of the qualifying adult.

III. DISCUSSION

Massachusetts imposes a sales tax on retail sales in Massachusetts of tangible personal property, including motor vehicles, by any vendor, unless exempt under a particular provision of law. G.L. c. 64H, § 2. The exemptions from the sales tax are found in G.L. c. 64H, § 6. In general, G.L. c. 64H, § 6(u) excludes from sales tax the amount charged for:

[A] motor vehicle purchased by and for the use of a person who has suffered loss, or permanent loss of use of, both legs or both arms or one leg and one arm. This exemption shall apply to one motor vehicle only owned and registered for the personal, noncommercial use of such person.

The first sentence of G.L. c. 64H, § 6(u) exempts sales of a motor vehicle that is purchased by *and* for the use of a person qualifying for exemption under the statute. The second sentence of the statute, however, contains no express requirement that the purchaser actually be a person described in G.L. c. 64H, § 6(u). It grants the exemption merely to any vehicle owned and registered *for* the personal non-commercial use of such person.^[2] We examine whether, in light of the statute as a whole, a person described in G.L. c. 64H, § 6(u) must also be the actual purchaser of the vehicle.

In examining statutes, the words must be construed in association with the general statutory plan. See *Commissioner of Revenue v. Wells Yachts South, Inc.*, 406 Mass. 661, 664, 549 N.E. 2d 1131 (1990), citing *Baker v. Binder*, 34 Mass. App. Ct. 287, 289, 609 N.E. 2d 1240 (1993). Every statute, if possible, is to be construed in accordance with sound judgment and common sense, so as to make it an effectual piece of legislation." *Brunette v. Board of Assessors of Southampton*, A.T.B. Docket No. F231437 (1996 Mass.) citing *Sun Oil Co. v. Direction of the Division on the Necessities of Life*, 340 Mass. 235, 238 (1960), quoting *Commonwealth v. Slome*, 321 Mass. 713, 716 (1947). It is also a canon of statutory interpretation not to overemphasize one word or part of a statute at the expense of another word or part, in order to produce a rational result in consonance with the presumed intent of the legislature. See *Deblois v. Commissioner of Corporations and Taxation*, 276 Mass. 437, 438 (1931).

To carry out the general purpose and intent of a statute, courts are often compelled to construe "or" as meaning "and," and "and" as meaning "or". See, e.g., 70 U.S. 445, 447, 18 L. Ed. 243, 3 Wall . 445; *Williams v. State*, 99 Ark. 149, 137 S.W. 2d 927 (1911); *New Jersey State Bd. Of Optometrists v. Koenigsberg*, 33 N.J. Super. 387, 11 A.2d 325, 328-9 (1954). In Massachusetts, "there is ample precedent for construing the word "and" disjunctively in order to further a recognized legislative purpose." See, e.g., *Massachusetts Association of Cosmetology Schools, Inc. v. Board of Registration in Cosmetology*, 40 Mass. App. Ct. 706; 667 N.E. 2d 282 (1996), citing *Somerset v. Dighton Water Dist.* 347 Mass. 738, 742-743, 200 N.E. 2d 237 (1964). See also *Brunette v. Board of Assessors of Southampton*, A.T.B. Docket No. F 231437 (1996 Mass. Tax LEXIS 55), citing *Assessors of Holyoke v. State Tax Commission*, 355 Mass. 223, 243-244 (1969).

The Commissioner is unaware of any decisions discussing the legislative intent behind G.L. c. 64H, § 6(u). However, the Massachusetts Appellate Tax Board has examined a similar provision found in G.L. c. 60A § 1. See *Brunette v. Board of Assessors of Southampton*, A.T.B. Docket No. F 231437 (1996) construing G.L. c. 60A, § 1. That provision states:

The excise imposed by this section shall not apply. . . to a motor vehicle owned and registered to any person who has suffered permanent impairment of vision of both eyes. . . . This exemption shall apply to not more than one motor vehicle owned and registered for the

personal, noncommercial use of such veteran or person.

In the *Brunette* case, Mr. Brunette and his wife were both registered owners. The Commissioner argued that since only one registered owner was disabled, they were entitled to only 50% of the exemption. Noting that Mr. Brunette would never drive the car, the A.T.B. stated that “[i]t is not unreasonable to assume, and perhaps it would be unreasonable not to assume, that the spouse of a blind person or other physically challenged person would be the joint registered owner of a vehicle that could never be driven by the disabled spouse.” *Id.* Acknowledging that “[a] statute should not be read in a manner which defeats its utility” and observing that requiring joint ownership and registration would, per se, deny to the physically challenged person the full exemption, the A.T.B. granted the parties a full abatement. The Board further stated: “Clearly it was the intent of the Legislature to provide a small advantage, in the form tax relief, to those persons who are blind or physically challenged in some other way. That admirable goal should not be vitiated by an interpretation of the statute which defeats its utility and thwarts its very legislative purpose.” *Id.*, citing *Commonwealth v. Wellesley Toyota Co.*, 18 Mass. App. Ct. 733, 736 (1984), quoting *Simon v. Solomon* 385 Mass. 91, 100 (1982).

In examining G.L. c. 60A, § 1, the A.T.B. examined the various sentences as a whole. The Board stated: “To the extent there is any issue as to whether the Legislature, by the first quoted sentence of the statute, intended to require exclusive ownership and use of the vehicle by the impaired individual, it is obviated by the last quoted sentence. *Id.* “By use of the language, ‘this exemption shall apply to not more than one motor vehicle owned and registered for the personal, noncommercial use of such veteran or person,’ (emphasis added) the Legislature evinced an intention to allow the full exemption for one motor vehicle as long as the vehicle is owned and registered for the noncommercial use of a person who is blind.” *Id.* Clearly, the A.T.B. construed the phrase “such veteran or person” in Chapter 60A as referring to a blind owner/registrant, regardless of whether the vehicle is jointly owned and registered by a non-blind owner/registrant.

The Commissioner applies the same reasoning here. The second sentence of G.L. c. 64H, § 6(u), which is similar to the second sentence of G.L. c. 60A, § 1, also indicates a legislative intention to allow the exemption to a purchaser of a motor vehicle, who is not described in section 6(u), so long as the vehicle is owned and registered for the use of the otherwise qualifying person described in that provision. In *Brunette*, it was unreasonable not to assume that someone other than a blind person would drive the vehicle; it would be equally unreasonable here to assume that a disabled minor child or adult who cannot enter into a legally binding contract is the actual purchaser of the vehicle. For this reason, the phrase “such person” must refer to the § 6(u) eligible person, regardless of whether that person is the actual purchaser of the vehicle.

In accordance with the general principles of *Brunette*, the Commissioner interprets G.L. c. 64H, § 6(u) to include purchases by someone other than the person described in G.L. c. 64H, § 6(u). So long as the vehicle is owned and registered for the personal noncommercial use of an otherwise eligible person, the exemption is not unavailable solely because the eligible person is not the contract purchaser of the vehicle. However, while the exemption in G.L. c. 64H, § 6(u) applies to motor vehicles purchased with the original intent to transport a person eligible under that provision, it does not apply to a motor vehicle originally purchased without the intent that it be used by or for a person who would otherwise qualify for exemption under § 6(u). Upon installation of a lift in the vehicle, the purchase of the lift would be exempt under a separate statutory provision, G.L. c. 64H, § 6(l), provided that the lift has been prescribed by a registered physician. See DOR Directive 00-7. It also does not apply to repair or replacement parts, such as oil or tires. Contrast other sales tax exemptions, such as G.L. c. 64H, § 6(aa), pertaining to motor buses used to provide scheduled, intracity service, which explicitly includes “repair or replacement parts therefor, and material and tools used in for the maintenance and repair thereof . . .” or G.L. c. 64H, § 6(pp) pertaining to vessels used exclusively to provide scheduled commuter passenger service and “repair or replacement parts therefor, and materials and tools used in and for the maintenance and repair thereof.”

IV. CONCLUSION

the language of G.L. c. 64H, § 6(u), taken as a whole, coupled with a recognition of established

principles of statutory construction, allows an exemption for purchases of a motor vehicle by a person other than a person described in G.L. c. 64H, § 6(u), so long as the vehicle is owned and registered for the personal, noncommercial use of the § 6(u) eligible minor child or adult. In order to present a claim of exemption, the substantiation requirements of this Directive must be met.

/s/Alan LeBovidge
Alan LeBovidge
Commissioner of Revenue

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October 20, 2003

DD 03-11

[1] Affidavit in Support of a Claim for Exemption for Sales or Use Tax for a Motor Vehicle Transferred to a Disabled Person.

[2] The Motor Vehicles regulation, 830 CMR 64H.25.1 also contains provisions involving sales or transfers of a motor vehicle to and for the use of any person who has suffered a loss described in G.L. c. 64H, § 6(4). See 830 CMR 64H.25.1(7)(f).